NOT FOR PUBLICATION

THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ACHILLES CURBISON, et al. Plaintiff, v. UNITED STATES GOVERNMENT OF NEW JERSEY, et al., Defendants.	HON. JEROME B. SIMANDLE Civil No. 05-5280 (JBS) **OPINION**

APPEARANCES:

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SIMANDLE, District Judge:

This matter comes before the court on four motions. Defendants Bayer Corporation and its chief executive officer and board of directors and the United States (along with certain government employees) have each filed separate motions to dismiss the complaint filed by Plaintiff Achilles Curbison ("Plaintiff")[1] under Rules 12(b)(1), (2), (5) and (6), Fed. R. Civ. P. Defendant Timothy J.P. Quinlan has filed a motion to dismiss, or in the alternative, for summary judgment. Finally, Plaintiff Achilles Curbison has also filed a motion for judgment on the pleadings. In his complaint, Plaintiff alleges that the defendants in this matter unlawfully seized and disposed of his property for monetary gain, violated Plaintiffs' civil rights and misrepresented themselves and the true facts to the courts through a conspiracy. For the reasons stated below: (1) the motions to dismiss of Bayer Corporation and the United States will be granted; (2) Defendant Quinlan's motion for summary judgment will be granted; and (3) Plaintiff's motion for judgment on the pleadings will be denied.

[1] Plaintiff Curbison also names two other additional Plaintiffs -- Neleh Company, LLC and Black Eagle, Inc. Plaintiff Curbison is the sole owner of both entities.

I. BACKGROUND

A. The Original Action

Plaintiff seeks relief from alleged tortious actions committed by the various defendants related to a check forgery lawsuit filed by Bayer Corporation ("Bayer") in 2000. Specifically, on April 4, 2000, Bayer filed a civil complaint against Summit Bank, Levy & Levy, P.A. and William N. Levy, Esq. (who conducts his legal practice as Levy & Levy) stating that Summit negligently cashed a forged check issued by Bayer and deposited the funds into a bank account owned by Levy & Levy (the "Original Action"). Bayer sought a judgment against Summit Bank, Levy & Levy and William Levy personally for return of the stolen funds. As part of the Original Action Summit Bank filed a third-party complaint (the "Third Party Complaint") against Plaintiff Neleh Company, LLC, and others who received funds from the forged check seeking recovery of those funds.

Plaintiff claims that as a result of this suit, agents of the Federal Bureau of Investigation, accompanied by officers and detectives of the Cherry Hill, New Jersey Police Department seized the real and business property of Neleh Company in August of 2000. (Complaint at ¶ 4.) Plaintiffs allege that the real and business property of Black Eagle and of Curbison was also confiscated. (Id.) Curbison states that the Third Party Complaint against Neleh Company was dismissed without prejudice

as to all defendants in June, 2001, but that the seized property has not been returned, nor have Plaintiffs been compensated for the seized property. (Complaint at ¶ 5.)

B. Claims against Bayer and Certain Officers of Bayer

Curbison alleges that, through the Original Action against Summit Bank, Defendants Bayer, its CEO, the Board of Directors and others not part of this motion (collectively, the "Bayer Defendants")[2] have caused an unlawful deprivation of Plaintiff's real and personal property and have irreversibly damaged his personal and business reputation. Specifically, Plaintiff alleges that the Bayer Defendants (a) unlawfully seized and disposed of the property for monetary gain; (b) violated Plaintiff's civil rights; and (c) misrepresented themselves and the true facts to the courts by and through a conspiracy.

C. Claims Against the United States and Certain Federal Employees

Plaintiff's claims against the United States, Phillip L. Buvia (retired FBI Special Agent), Robert J. Cleary (United States Attorney), Edward R. Davis (FBI agent), Michael Poulton (FBI) and Andrew Schiff (Assistant United States Attorney) and various John Does (collectively, the "Federal Defendants") arise

[2] The Complaint names as defendants the Bayer Corporation ("Bayer"), the "Unkonwn [sic] Unnamded [sic] Chief Executive Officer/President of the Bayer Corp." ("CEO"), and the "Unknown Unnamed Individual Board of Directors of the Bayer Corp." ("Board of Directors").

from an investigation conducted by the FBI into Plaintiff's involvement with the check forgery incident and ultimately to the seizure of Plaintiff's property purchased with proceeds gained through his participation in the scheme. Specifically, in February of 2000, the FBI was investigating Plaintiff for his participation in a $1.2 million counterfeit check drawn on a Bayer bank account. The investigation revealed that a Thaddeus E. Watley negotiated the counterfeit check and then wired $700,000 of the proceeds to an intermediary and then to Plaintiff. The FBI then traced the illegally obtained funds to the purchase of a home and two vehicles and Plaintiff later acknowledged that he purchased the home and two vehicles with these funds. (Federal Defendants' Br. at 3.)

On August 3, 2000, the United States filed a Verified Complaint for Forfeiture in Rem in United States District Court for the District of New Jersey against the home and seized the two vehicles pursuant to an authorized search warrant. According to the Federal Defendants, process was fully issued in the action, notice of the forfeiture action was published in the Courier Post newspaper and, on July 10, 2001, the district court entered partial default judgment and final order of forfeiture transferring all right, title and interest in the real property and vehicles to the United States.

Plaintiff's amended complaint ("Amended Complaint") states

an assortment of state and federal civil rights violations and tort claims. Specifically, Plaintiff alleges that the Federal Defendants (1) committed an unlawful search and seizure; (2) were part of a conspiracy to execute an unlawful search and seizure; (3) unlawfully forfeited Plaintiff's property; (4) participated in a conspiracy to execute an unlawful forfeiture; (5) obstructed justice and conspired to obstruct justice; and (6) intentionally inflicted emotional pain and distress upon Plaintiff (and conspired to do so.)

D. Claims Against Timothy Quinlan, Esq.

Plaintiff's claims against Timothy Quinlan center on Quinlan's acceptance of a summons and complaint on behalf of Neleh Company, LLC in the Original Action. According to Quinlan and New Jersey State Business Gateway Service Corporate and Business Information Reporting, Quinlan is listed with the State of New Jersey as the registered agent for Neleh Company. (Quinlan Br. at 2 and Ex. A.) On June 1, 2001, the summons and complaint in the Original Action were served upon Quinlan. Quinlan claims that, upon receiving the Complaint, he forwarded the complaint to Neleh Company through a company that provides corporate services for attorneys. Plaintiff alleges that Defendant Quinlan is liable for "fraudulent misrepresentation" and "obstruction of justice" related to Quinlan's accepted a summons and complaint without authority. (Complaint at I, N.)

E. Procedural History

Plaintiffs first filed this complaint on November 16, 2005, which was dismissed without prejudice on December 22, 2005. That order was vacated on December 29, 2005 and Plaintiff filed the Amended Complaint on January 27, 2006. [Docket Item No. 5.] The Bayer Defendants filed this motion to dismiss on April 6, 2006 to which Plaintiff filed opposition on April 24, 2006. [Docket Item Nos. 17, 18.] Defendant Quinlan and the Federal Defendants filed their motions to dismiss on May 4, 2006 and July 11, 2006, respectively. [Docket Item No. 20, 28.] Plaintiff filed his response in Opposition to these motions on May 12 and July 24, 2006, respectively. [Docket Item No. 21, 29.] Finally, Plaintiff filed a motion for judgment on the pleadings and a motion for leave to file a counterclaim on June 21, 2006, to which the Bayer Corporation replied on July 6, 2006. [Docket Item Nos. 22, 23, 26, 26.][3]

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[3] On June 21, 2006, Plaintiff also filed a "Motion for Leave of Court to File Counterclaim Pursuant to Fed. R. Civ. P. 13(e)(f)." [Docket Item No. 23.] Except for the Bayer Defendants, none of Defendants filed opposition to Plaintiff's motion. The proposed pleading mentions the adding of claims against Summit Bank, William N. Levy, Esq., and Levy & Levy, P.A., Rotan Lee, Esq. and the Estate of Rotan Lee, none of whom is a party to this case.

The Court assumes that Plaintiff seeks leave of court to make a counterclaim that matured after the pleadings (Fed. R. Civ. P. 13)(e)) or to join additional parties to this action (Fed. R. Civ. P. 13(h)). In either case, Plaintiff's motion must be denied as motions for leave to bring a counterclaim or cross-claim cannot be brought by the plaintiff. See 6 Charles Alan

II. STANDARDS OF REVIEW

A. Motion to Dismiss

The Defendants' motions move to dismiss on various grounds including Rules 12(b)(1), (2), (5) and (6), Fed. R. Civ. P. A motion made under Rule 12(b)(1) and (2) argues that the claims should be dismissed because the court lacks either subject matter jurisdiction (Rule 12(b)(1)) or personal jurisdiction over the defendant (Rule 12(b)(2)). A defendant moving under Rule 12(b)(5) argues that dismissal is warranted because plaintiff failed to properly serve defendant. A motion under Rule 12(b)(6)

Wright & Arthur R. Miller, Federal Practice and Procedure § 1403 (3d ed. 2004)("Any claim that defendant has against plaintiff or that a third-party defendant has against the third-party plaintiff may be asserted as a counterclaim . . . [and under Rule 13(h)] additional parties may be brought in . . . for purposes of fully disposing of any counterclaim or cross-claim in the action.") Rather than a motion for leave under Rule 13(e) or (h), Plaintiff must file a motion for leave to amend his Amended Complaint under Fed. R. Civ. P. 15(a). Leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P. 15(a), and will be denied only (a) "if a plaintiff's delay in seeking amendment is undue, motivated by bad faith, or prejudicial" to the defendant or (b) if the amendment would be futile (i.e., the amendment fails to state a cause of action). Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984); see also Massarsky v. General Motors Corp., 706 F.2d 111, 125 (3d Cir. 1983). Thus, this Court will deny Plaintiff's motion under Rule 13(e), (h) without prejudice to Plaintiff's filing of a motion to amend his complaint in compliance with Rule 15(a) and the relevant case law within 20 days of the entry of the accompanying Order. Plaintiff must attach a copy of his proposed Second Amended Complaint to his motion, as required by L. Civ. R. 7.1(f). Further, any proposed second amended complaint cannot contain claims already dismissed in this opinion and accompanying order, and it must state the basis for this Court's subject matter jurisdiction, and otherwise comply with the Federal Rules of Civil Procedure.

is more complicated as this motion must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A district court must accept any and all reasonable inferences derived from those facts. Unger v. Nat'l Residents Corp. v. Exxon Co., U.S.A., 761 F. Supp. 1100, 1107 (D.N.J. 1991); Gutman v. Howard Sav. Bank, 748 F. Supp. 254, 260 (D.N.J. 1990). Further, the court must view all allegations in the complaint in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The question before the court is not whether plaintiff will ultimately prevail; rather, it is whether he can prove any set of facts in support of his claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

B. Motion for Summary Judgment

Under Rule 56(c), "summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (citations omitted). It is true that in deciding whether there exists a

disputed issue of material fact, the Court must view the facts asserted by the non-moving party in the light most favorable to that party. See Aman v. Cort Furniture Corp. 85 F.3d 1074, 1080-81 (3d Cir. 1996). However, a non-moving party may not rest upon mere allegations, general denials, or vague statements. Bixler v. Central Penn. Teamsters Health and Welfare Fund, 12 F.3d 1292, 1302 (3d Cir. 1993).

III. DISCUSSION

A. Preliminary Matters

1. Representation of Neleh Company, LLC and Black Eagle, Inc.

Because Plaintiffs Neleh Company and Black Eagle are represented by pro se plaintiff Achilles Curbison, and not by licensed counsel, the Amended Complaint must be dismissed as to those two plaintiffs. In Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 202 (1993), the Supreme Court held that "[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel." In Rowland the Court further held that "the rationale for that rule applies equally to all artificial entities." Id.[4] Thus, Plaintiffs

[4] The New Jersey Court Rules codify this provision explicitly:

> Except as otherwise provided . . . a business entity other than a sole proprietor shall neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice in this State.

Neleh Company, LLC, a limited liability corporation, and Black Eagle, Inc., a corporation, must be dismissed from the case due to their lack of an appearance through an attorney.

2. The Federal Defendants' Application to Extend Time to Answer under Local Civ. Rule 6.1(b)

The Court must determine whether it will consider the Federal Defendants' motion to dismiss filed on July 11, 2006 in light of the fact that some of the Federal Defendants appear to have been served as early as March 1, 2006 and March 24, 2006. [Docket Item No. 15.] On June 26, 2006, the Federal Defendants filed an application for an extension of time to answer, move or otherwise respond under Local Civil Rule 6.1(b).[5] In its scant application, the Federal Defendants represent only that (1) they have sought no previous extension and (2) request an extension of fifteen days in which to answer Plaintiff's Complaint (until July 1, 2006). [Docket Item No. 24.] Plaintiff objected to the Federal Defendants' application arguing that an extension is inappropriate because the Federal Defendants have waited until

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Pressler, Current N.J. Court Rules, R. 1:21-1(c)(2006).

[5] Local Civ. R. 6.1(b) states, in pertinent part

> The time within which to answer or reply may, before its first expiration and with or without notice, be extended once for a period not to exceed 15 days on order granted by the Clerk. Any other proposed extension of time must be presented to the Court for consideration.

the expiration of the originally prescribed period to make their request and have failed to explain their non-compliance or inability to respond in a timely fashion. [Docket Item No. 27.]

The Federal Defendants' application does not comply with Local Civ. R. 6.1(b)'s "breathing room" rule and thus the Federal Defendants are not entitled to an automatic 15-day extension granted by the Clerk. This is because the Federal Defendants' application (1) was not filed before the first expiration and (2) did not disclose the date service of process was effected as required by Local Civ. R. 6.1(a). See Lite, N.J. Fed. Practice Rules, Comment 3 to L. Civ. R. 6.1 (Gann)("So long as application is made in proper form, see L. Civ. R. 6.1(a), before the time to answer or reply has expired, the Clerk will grant the extension . . . .") However, the Court will consider the application to be made under the second sentence of L. Civ. R. 6.1(b) and finds that it is in the interest of justice to grant the Federal Defendants' application for an extension to file their answer or reply. The Court notes too that the Federal Defendants complied with the July 11, 2006 deadline they established in their Local Rule 6.1(b) application for which they would reply to or answer Plaintiff's Complaint. This extension causes no prejudice to Plaintiff, who has also received ample time to oppose these motions upon the merits. As such, the Court will consider the Federal Defendants' motion to dismiss as timely filed.

B. The Bayer Defendants' Motion to Dismiss

1. Bayer's Motion will be Granted because Plaintiff Lacks Standing to Sue the Bayer Defendants.

Defendant Bayer argues first that, because Plaintiff's injuries (the seizure of Plaintiff's real property and vehicles) were related to the Third Party Complaint initiated by Summit Bank and not by Bayer in the Original Action, Plaintiff's injuries are not causally connected to the Bayer Defendants actions. According to the Bayer Defendants, because there is no causal connection, Plaintiff lacks standing to sue the Bayer Defendants and Plaintiff's Amended Complaint must be dismissed as to the Bayer Defendants under Rule 12(b)(1), Fed. R. Civ. P.

A motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(1) seeks dismissal due to the lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). Before a federal court can consider the merits of a legal claim, "the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue." Whitmore v. Arkansas, 495 U.S. 149, 154 (1990). Article III of the Constitution limits the judicial power of federal courts to "cases or controversies" between parties. U.S. CONST. art. III, § 2. To satisfy Article III's standing requirements, a plaintiff must allege:

> (1) [an] injury in fact . . . ; (2) a causal connection between the injury and the conduct complained of; and (3) [that] it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Danvers Motor Co., Inc. v. Ford Motor Co., 432 F.3d 286, 290-91 (3d Cir. 2005) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)); see also Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-104 (1998)(the requested relief must be likely to "redress the alleged injury.") Specifically, the "case or controversy" limitation of Art. III "requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 41-42 (1976). The plaintiff bears the burden of establishing standing. See Storino v. Borough of Point Pleasant Beach, 322 F.3d 293, 296 (3d Cir. 2003).

Plaintiff has failed to satisfy this burden. Although, Plaintiff alleges that his personal property (as well as the property of Neleh Company and Black Eagle) was unlawfully seized as a result of the actions of the Bayer Defendants, the seizure and subsequent damaged allegedly suffered by Plaintiff was not caused by the Bayer Defendants' actions. Plaintiff was not named by Bayer in the Original Action and at no time did Bayer ever make a claim against Plaintiff. Rather, Plaintiffs were brought in as third-party defendants in the Original Action against Summit Bank. If Mr. Curbison or his business entity was found to be liable for that action, or subject to execution as he alleges,

any such liability or execution was not attributable to Bayer's claims in the Original Action. Plaintiffs may not ascribe the injury that resulted from the "independent action of [a] third party not before the court" to the Bayer Defendants. Because Plaintiff cannot demonstrate that Bayer's act of bringing the Original Action is causally related to any harm suffered by Plaintiff, Plaintiff lacks standing to sue the Bayer Defendants and thus, the Bayer Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) will be granted.

2. Bayer's Motion will be Granted as to its CEO and Board of Directors because these Individuals were not Properly Served

Even if this Court had not concluded that Plaintiff lacks standing to sue any of the Bayer Defendants, the Bayer Defendants' motion to dismiss should be granted as to Bayer's CEO and Board of Directors because Plaintiff failed to effectively serve process on these defendants.[6] Service of process must be accomplished in such a way as to "afford notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Jameson v. Great Atlantic and Pacific Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). The party asserting the validity of service bears the burden of proving that service was

[6] Counts A, B, C, D, E, F, G, H, K, M, N, O, P and Q are directed towards Bayer's CEO and Board of Directors although none of them were individually named.

valid, see Grand Entm't Group v. Star Media Sales, 988 F.2d 476, 488 (3d Cir. 1993), and under Rule 12(b)(5), the district court may dismiss a case due to the insufficiency of service. See Fed. R. Civ. P. 12(b)(5). Because Bayer's CEO and Board of Directors are individuals, Plaintiff bears the burden of proving that service was proper under Rule 4(e), Fed. R. Civ. P. In the United States, service upon an individual from whom a waiver has not been obtained and filed may be effected in any judicial district of the United States

> (1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or
>
> (2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. Rule 4(e). In New Jersey, service of process on an individual may be accomplished by

> causing the summons and complaint to be personally served within [New Jersey] . . . as follows: (1) Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode . . . *or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf.*

Pressler, Current N.J. Court Rules, R. 4:4-4(1)(2006)(emphasis

added). If service of process is made to "a person authorized by appointment or by law to receive services of process" on an individual's behalf, the plaintiff bears the burden of proof "that an alleged agent has specific authority, express or implied, for the receipt of process." Zoning Bd. of Adjustment of Sparta Tp. v. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 377 (App. Div. 1985).[7]

In this case, Plaintiff attempted to service Bayer's CEO and Board of Directors by delivering a copy of the summons and complaint on Douglas A. Pearson. (Declaration of Douglas A. Pearson ¶¶ 3, 4; Bayer's Br. at Ex. B.) However, according to Pearson's declaration, Pearson is authorized to accept service on behalf of Bayer Corporation only, and not on behalf of the CEO and members of the Board of Directors. (Id. ¶¶ 3, 4.) According to Pearson, Pearson specifically informed the process server of this fact. (Id. ¶¶ 5.) Moreover, according to Bayer and undisputed by Plaintiff, Pearson is not a person authorized by appointment or by law to accept service on behalf of either Bayer's CEO or Board of Directors. Curbison then, cannot show

[7] Moreover, in Local 617, Etc. v. Hudson Bergen Trucking Co., 182 N.J. Super. 16, 20 (App. Div. 1981), the New Jersey Appellate Division, adopting the position of certain federal courts, held that "in the absence of an express agreement between the agent and principal or in the absence of circumstances which clearly show that such an agreement was intended by the parties, authorization to accept service of process on behalf of a corporation or an individual would not be deemed to exist."

that there is an express or implied agreement between the CEO and Pearson or the Board of Directors and Pearson. Because Plaintiff failed to properly serve either the CEO or Board of Directors in a way consistent with Fed R. Civ. P. 4(e), the Bayer Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5) will be granted and the complaint dismissed as to Bayer's CEO and Board of Directors.

C. The Federal Defendants' Motion to Dismiss

The Federal Defendants argue that Plaintiff's individual claims against the Federal Defendants fail because they are either untimely, federal agents are immune to the causes of action Plaintiff brings, this Court lacks subject matter jurisdiction over the claims or Plaintiff has failed to state a claim upon which relief can be granted. Although Plaintiff does not specifically reference the applicable statutes or case law that underlie his claims, it appears that Plaintiff's claim damages arising (1) under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) for damages related to a violation of Plaintiff's Fourth and Fifth Amendment Rights, (2) state common law torts, and (3) the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) & 2671, et seq.

1. Plaintiff's Bivens Claims

Plaintiff's claims against Special Agents Buvia and Poulton, FBI Agent Davis, Assistant U.S. Attorney Schiff and the John Doe

FBI Agents for violation of Plaintiff's Fourth and Fifth Amendment, while not artfully drafted, may, in the light most favorable to Plaintiff, be construed as a claim under Bivens. Under Bivens, the Supreme Court held that a violation of the Fourth Amendment by a federal agent acting under color of his authority gives rise to a cause of action against that agent, individually, for damages. 403 U.S. at 392-94. Later, the Supreme Court extended Bivens claims arising under the equal protection clause of the Fifth Amendment. See Davis v. Passman, 442 U.S. 228 (1979).

The Supreme Court in Bivens did not address the statute of limitations in a Bivens cause of action. However, the Third Circuit has held that "[b]ecause Congress has not established a federal statute of limitations for Bivens actions, [the district court] must look to the most analogous state statute of limitations." Napier v. Thirty or More Unidentified Federal Agents, 855 F.2d 1080, 1088 (3d Cir. 1988) (citing Wilson v. Garcia, 471 U.S. 261-67 (1985)). The most analogous state statute of limitation is the state's statute of limitations for personal injury actions. Tavares v. Myers, Slip Copy, 2006 WL 1644776 at *4 n. 8 (D.N.J. June 8, 2006)(citing Wilson v. Garcia, 471 U.S. 261, 280 (1985)). New Jersey's has a two year statute of limitations period on personal injury actions, N.J. Stat. Ann. § 2A:14-2, and it is this two-year limitations period that

applies to Plaintiff's Bivens action. See Cito v. Bridgewater Township Police Dept., 892 F.2d 23, 25 (3d Cir. 1989).

Here, Plaintiff's Bivens claims are barred by the two-year statute of limitations. Federal authorities seized Plaintiff's real property and vehicles in August of 2000 and the District Court for the District of New Jersey entered its final forfeiture order in July of 2001. Assuming that the later date of July 2001 is the appropriate date for analyzing the statute of limitation issue, Plaintiff's claims (which were filed in January of 2006) were untimely. According to New Jersey law, Plaintiff would have had to bring his claim by July of 2003 at the very latest in order to satisfy the statute of limitations. Thus, this Court will dismiss all of Plaintiff's Bivens claims[8] under Rule 12(b)(1) for lack of subject matter jurisdiction.

2. Plaintiff's State Common Law Tort Claim

In Count P of his Complaint, Plaintiff seeks damages from the individual Federal Defendants for the common law tort of intentional infliction of emotional distress stemming from the FBI's seizure of his property during the August 4, 2000 raid. However, as with Plaintiff's Bivens claims, this claim is time barred. N.J. Stat. Ann. 2A:14-2 ("Every action at law for an injury to the person caused by the wrongful act . . . of any

[8] Such claims relate to Count J (violation of the Fourth Amendment) and Counts L and N (violation of other of Plaintiff's constitutional rights) of Plaintiff's Complaint.

person within this State shall be commenced within two years next after the cause of any such action shall have accrued . . . .); see also Maldonado v. Leeds, 374 N.J. Super. 523, 530 (App. Div. 2005)(N.J. Stat. Ann. 2A:14-2 requires that a personal injury claim for emotional distress be brought within two years of the accrual of the cause of action.) Thus, because it was brought after August 4, 2002 (such as this claim which was brought in January 2006), Plaintiff's claim is untimely and Count P will be dismissed.

3. Plaintiff's Claims Against the United States under the Federal Tort Claims Act.

In his Amended Complaint, Plaintiff makes a number of claims against the United States. Although not specified in the Amended Complaint, the Court will construe these claims under the Federal Tort Claims Act (the "FTCA"). Under the FTCA, the sovereign immunity of the United States is waived for certain torts committed by Federal employees. See 28 U.S.C. § 1346(b). A claim under the FTCA must be (1) against the United States, (2) for money damages, (3) "for injury or loss of property, or personal injury or death," (4) caused by the negligent or wrongful act or omission of any employee of the United States, (5) "while acting within the scope of his office or employment," (6) "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." Id. In

addition to satisfying these six elements, a plaintiff's claim under the FTCA must comply with the applicable statute of limitations. Under federal law, tort actions against the United States must be:

> [P]resented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b). "The time limits expressed in this statute are jurisdictional and cannot be waived." Shah v. Rhinehart, No. 04-259, 2006 U.S. Dist. LEXIS 44052, at * 22-23 (W.D. Pa. 2006) (citing In re Franklin Savings Corp., 385 F.3d 1279, 1287 (10th Cir. 2004)). A district court lacks subject matter jurisdiction when a plaintiff fails to meet timing requirements in § 2401(b). In re Franklin Savings Corp., 385 F.3d at 1287.

In the present case, Plaintiff's claim is time barred as Plaintiff has failed to meet time requirements of § 2401(b). Plaintiff did not file an administrative claim with the FBI relating to any of his claims alleged in the Amended Complaint nor did he allege that he satisfied this jurisdictional element. Because Plaintiff's cause of action is untimely, this Court lacks subject matter jurisdiction. Thus, Counts J, L, N and P will be dismissed.

4. Plaintiff's Conspiracy Claims against the Federal Defendants

In Counts K, M, O and Q, Plaintiff brings a number of claims for civil conspiracy. Specifically, Count K claims conspiracy related to an unlawful search and seizure, Count M claims conspiracy related to unlawful forfeiture, Count O claims conspiracy to obstruct justice and Count Q claims conspiracy to inflict emotional pain and distress.

A claim for civil conspiracy requires a separate underlying tort as a predicate for liability. See In re Orthopedic Bone Screw Prods. Liab. Litig., 193 F.3d 781, 789 (3d Cir. 1999)("[O]ne cannot sue a group of defendants for conspiring to engage in conduct that would not be actionable against an individual defendant . . . [rather] actionable civil conspiracy must be based on an existing independent wrong or tort that would constitute a valid cause of action if committed by one actor.")(internal quotation omitted). In other words, the court cannot find civil conspiracy when no underlying tort exists. Boyanowski v. Capital Area Intermediate Unit, 215 F.3d 396, 407 (3d Cir. 2000)("[a] verdict on civil conspiracy should yield to a finding for the defendant on the underlying tort because the cause of action is wholly subordinate to te underlying tort's existence.")

In this case, in Sections III(c), supra, this Court held that Plaintiff's claims against the Federal Defendants for the

underlying torts must be dismissed. Because this Court dismissed the underlying tort claims (Counts J, L, N and P), the Court must likewise dismiss the civil conspiracy claims (Counts K, M, O and Q). Plaintiff can prove no set of facts in support of his claims that would entitle him to relief and thus, his claims must be dismissed for failure to state a claim upon which relief can be granted.

D. Defendant Quinlan's Motion for Summary Judgment

In his Amended Complaint, Plaintiff brings two claims against Quinlan. First, Plaintiff alleges fraudulent misrepresentation, in that beginning on June 1, 2001, Quinlan "knowingly, deliberately and with malicious intent fraudulently misrepresented himself . . . as an official and authorized agent of" Neleh Company, LLC. (Amended Compl. Count I, ¶¶ 183.) In addition, Plaintiff claims that Quinlan "unlawfully intercepted, and retained, court documents belonging to Plaintiff" and that Quinlan is "unknown to Plaintiff" and has never been an official, or authorized agent of the Neleh Company, LLC. (Id. at ¶¶ 183-85.) According to Plaintiff, by accepting and retaining certain legal documents belonging to Plaintiff, Quinlan "has violated Plaintiff[]'s . . . constitutional rights to, inter alia, access to the courts, the right to confront their accusers, and [Plaintiff's] right to secure witnesses . . . ." (Id. at ¶ 186.) Plaintiff also alleges that Quinlan is liable for tort of

obstruction of justice because Quinlan "impersonated an officer and authorized agent of the Neleh Company, LLC" when he accepted service of a complaint in the Original Action. (Amended Compl. Count N, ¶ 440-42.) Such actions on the part of Quinlan, according to Plaintiff, "deprived Plaintiff[] of timely, proper notice of the complaint [in the Original Action and] den[ied] the Plaintiff[] the ability, and opportunity to prepare...a proper defense . . . ." (Id. at ¶ 444.)

In his motion, Quinlan argues that Plaintiff has failed to state a cause of action against Quinlan because (1) Neleh Company had selected Quinlan as its registered agent when it incorporated in New Jersey and (2) Quinlin in fact did provide notice of the complaint in the Original Action to Neleh Company in a timely manner.[9] In his opposition brief, Plaintiff argues that Quinlan has failed to present any documentation to support his claim that he is Neleh Company's registered agent or an authorized agent of Neleh Company. If Quinlan had been Neleh Company's registered

[9] Because this Court will look to matters outside the pleadings that were submitted by Quinlan (namely Quinlan's Certification as well as certain public records from the State of New Jersey), the Court will review Plaintiff's motion as if were a motion for summary judgment. See Fed. R. Civ. P. 12(b)("If, on a motion asserting [12(b)(6)] to dismiss for failure of th pleadings to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . . .") Plaintiff had the opportunity to rebut the documentary evidence relied upon by Quinlan in his motion, as discussed below.

agent, according to Plaintiff, he "would have known that [Plaintiff] is and was the sole proprietor and incorporator as well as the address and notified [Plaintiff] of lawsuit [sic]." (Pl.'s Br. in Opp. to Quinlan's Summary Judgment Motion.) Finally, Plaintiff alleges that Quinlan has failed to argue that summary judgment is appropriate as to Plaintiff's obstruction of justice claim.

Under the New Jersey Business Corporations Act ("NJBCA"), a company that is incorporating in New Jersey must maintain a registered office and a registered agent in the state. N.J. Stat. Ann. 14A:4-1(1). A registered agent may perform task for the corporation such as accepting service of process. See Fed. R. Civ. P. 4(h)(1); N.J. Stat. Ann. 14A:4-2(1)("Every registered agent shall be an agent of the corporation which has appointed him, upon who process against the corporation may be served.")

Quinlan provides the Court with a certification in which he certifies that he is the designated agent within the State of New Jersey for Neleh Company, LLC. (Certification of Timothy J.P. Quinlan, Esq. ¶ 4, Quinlin's Br. at Ex. B.) In addition, Quinlan provided the Court with a recent Business Entity Status Report for Neleh Company, LLC which states that he is the registered agent (and lists his business address). (Id. at Ex. A.) Thus, according to Quinlan, when Neleh Corporation incorporated in January of 2000, it designated Quinlan as its registered agent.

In his opposition papers, Plaintiff did not dispute these facts or rebut Quinlan's evidence. As such, there is no dispute of fact that, because he was the registered agent of Neleh Company from January of 2000 until the present, Quinlan did not fraudulently misrepresent himself as an official or authorized agent Neleh. Moreover, because Quinlan was authorized by the NJBCA to receive service of process on behalf of Neleh Company, he did not "unlawfully intercept[], and retain[], court documents belonging to Plaintiff." As such, Quinlan's motion for summary judgment as to Plaintiff's fraudulent misrepresentation claim will be granted and Count I will be dismissed.

Although it is clear that Quinlan was authorized to accept service on behalf of Neleh (as its registered agent), Plaintiff also argues that Quinlan is liable for the tort of obstruction of justice for "impersonat[ing] an officer and authorized agent of the Neleh Company, LLC" when he accepted service of a complaint in the Original Action and "depriv[ing] Plaintiff[] of timely, proper notice of the complaint [in the Original Action and] den[ied] the Plaintiff[] the ability, and opportunity to prepare...a proper defense . . . ." (Amended Compl. Count N, ¶ 440-42, 444.) It is clear from the discussion supra that Quinlan was not "impersonat[ing] an officer and authorized agent" of Neleh but instead was the company's registered agent. Moreover, according to his certification, upon being served with the

complaint in the Original Action, Quinlan, as is his practice, immediately forwarded it to an attorney serving company who is responsible for forwarding the documents to the company. (Quinlan Cert. ¶¶ 6-10.) Moreover, Quinlan certified that the attorney servicing company he used told him that "they had record of receiving the complaint and they forwarded it to the attorneys for Neleh [Company], LLC." (Id. ¶ 11.) Again, Plaintiff fails to dispute these facts. As such, because Quinlan did not deprive Plaintiff of timely, proper notice of the complaint or deny him the opportunity to prepare a proper defense, this Court will grant Quinlan's motion for summary judgment as to Plaintiff's obstruction of justice claim and Count N of the Amended Complaint will be dismissed.

E. Plaintiff's Motion for Judgment on the Pleadings

On June 21, 2006, Plaintiff filed a motion for judgment on the pleadings under Rule 12(c), Fed. R. Civ. P.[10] [Docket Item No. 22.] "The Rule 12(c) judgment on the pleadings procedure primarily is addressed to . . . the function of disposing of cases on the basis of the substantive merits of the parties' claims and defenses as they are revealed in the formal pleadings." 5C Charles Alan Wright & Arthur R. Miller, Federal

[10] Under Rule 12(c) of the Federal Rules of Civil Procedure, "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

Practice and Procedure § 1367 (3d ed. 2004). Rule 12(c) states that "after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c).

Here, Plaintiff argues that (1) Plaintiff filed a Complaint on January 27, 2006 and the various defendants were served between March 1, 2006 and March 24, 2006 and (2) Defendants failed to file an anser to Plaintiff's complaint within the required 60 days. (Pl.'s Mot. for Judgment on Pleadings ¶¶ 2-4.) Thus, Plaintiff appears to argue that this Court should enter judgment on behalf of Plaintiff do to Defendants' failure to timely answer Plaintiff's summons and Complaint.[11] This Court will deny Plaintiff's motion because, at the time of Plaintiff's motion, the pleadings were not closed.[12]

IV. CONCLUSION

For the reasons expressed in this Opinion (1) the motions to dismiss of the Bayer Defendants and the Federal Defendants will be granted; (2) Defendant Quinlan's motion for summary judgment will be granted; and (3) Plaintiff's motion for judgment on the pleadings will be denied. The accompanying Order will be

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[11] The Court notes, as they have pointed out in their opposition to Plaintiff's motion, that the Bayer Defendants timely responded to the Complaint with a motion to dismiss on or about April 6, 2006. Thus, they are improperly named as a party in Plaintiff's motion.

[12] See Section III.A.2, supra for discussion.

entered.

December 7, 2006
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
U.S. District Judge